

MAY 8 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERT R. BOSWELL,

Defendant - Appellant.

No. 02-10417

D.C. No. CR-00-00047-10-RCC

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Raner C. Collins, District Judge, Presiding

Submitted April 1, 2003**

Before: SKOPIL, FERGUSON, and BOOCHEVER, Circuit Judges.

Robert Randall Boswell appeals from his judgment and sentence for
conspiracy to possess with intent to distribute marijuana, in violation of 21 U.S.C.

* This disposition is not appropriate for publication and may not be cited to or
by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral
argument. See Fed. R. App. P. 34(a)(2).

§ 846. Boswell claims he was denied his Sixth Amendment right to counsel when the government based its refusal to move for a downward departure under U.S.S.G. § 5K1.1 on statements Boswell made under oath when he was effectively unrepresented by counsel. We have jurisdiction under 28 U.S.C. § 1291.

Because Boswell's claim is entirely independent of his factual guilt, he did not waive it when he subsequently entered an unconditional guilty plea. See United States v. Garcia-Valenzuela, 232 F.3d 1003, 1006-07 (9th Cir. 2000).

We reject Boswell's claim. This is not a case where counsel took an "adversary and antagonistic" stance and thereby rendered ineffective representation. See United States v. Adelzo-Gonzalez, 268 F.3d 772, 779-80 (9th Cir. 2001); United States v. Wadsworth, 830 F.2d 1500, 1510-11 (9th Cir. 1987). Rather, Boswell was effectively represented when the court questioned him under oath on January 22, 2002. His attorney was not relieved of his duties as counsel until after Boswell had made the statements in issue.

AFFIRMED.